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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10
1200 Sixth Avenue
Seattle, WA 98101

DEC - 4 2002

Reply To
Attn Of: ECL-117

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Warren Bergholz, Jr., Acting Manager
U.S. Department of Energy
Idaho Operations Office
785 DOE Place
Idaho Falls, Idaho 83402

Re: Notice of Violation and Penalty Assessment

Dear Mr. Bergholz:

An inspection was performed of your facility during the week of January 28, 2002, pursuant to the Federal Facility Agreement and Consent Order ("FFA/CO"), Section 104 of the Comprehensive, Environmental Response, Compensation and Liability Act (CERCLA), and Section 3007(a) of the Resource Conservation and Recovery Act (RCRA). The inspection of the Department of Energy's (DOE's) Idaho National Engineering and Environmental Laboratory (INEEL) facility was performed by staff from the Idaho Department of Environmental Quality, EPA's National Enforcement Investigations Center and EPA Region 10. In our Notice letter dated July 22, 2002, we provided DOE with a copy of our completed inspection checklist and a summary notice of our observations. We have carefully reviewed DOE's August 22, 2002 response to our "Notice of Inspection Results," and have reassessed our observations in light of the new information, which clarified a number of our concerns.

At this time, EPA is assessing a penalty for one of the violations. In addition, there are two other potential violations for which DOE could be assessed penalties however, we are again asking DOE to provide additional clarification as to what steps will be taken to prevent further incidents. Lastly, there are four additional areas of concern that, although not potential violations, require follow-up actions to correct. These matters are discussed further in the letter.

I. Violation

DOE has violated the FFA/CO by failing to submit the Remedial Action Report for Operable Unit (OU) 3-13, Group 1 in accordance with the established deadline. Specifically, DOE has not performed their statutory obligation to implement the Group 1 Interim Action identified in the OU 3-13, October 1999, Record of Decision (ROD). This Interim Action would have established necessary infiltration controls to reduce

infiltration through the High Level Waste Tank Farm Soil by 80% thereby, minimizing continued leaching of radionuclides into the underlying aquifer. We take exception to DOE's assertion in its response to our Notice that, by accelerating tank closure activities and discontinuing use of the INTEC percolation ponds, the need to perform the surface sealing of the tank farm is eliminated. These actions do not prevent the mobilization of contaminants from the pipes and valves into the soil and eventually into the underlying aquifer since the soil continues to be exposed to precipitation. In fact, DOE is proposing to extend the deadline for the OU 3-14 ROD by 5 years.

DOE also asserts that it submitted a request for an extension in a letter dated August 30, 2001, wherein DOE requested an extension of three (3) years because of funding limitations experienced at the beginning of the fiscal year. Both IDEQ and EPA rejected this request as it did not contain the minimum information required under Section 13.1 of the FFA/CO, nor did DOE use the mechanism available under Section 28.5 of the FFA/CO for addressing funding shortfalls in cases where appropriated funds are insufficient to meet FFA/CO obligations. DOE did not submit a follow-up request with the necessary information.

The OU 3-13, Group 1, RD/RA Work Plan, approved pursuant to the terms of the FFA/CO established a deadline of July 29, 2002 for submittal of the Remedial Action Report for the interim action. Although a report was submitted and received by us prior to that date, entitled "Draft Interim Remedial Action Report", this document did not meet the definition of a Remedial Action Report as described in the FFA/CO. By failing to complete the surface sealing of the High Level Tank Farm Soil, DOE is allowing the continued mobilization of contaminants from leaking pipes and valves into the underlying perched aquifer and Snake River Plain Aquifer.

In accordance with Paragraph 11.1 of the FFA/CO, EPA is hereby assessing a penalty for failure to "submit a primary document pursuant to the appropriate deadline". Paragraph 11.1 of the FFA/CO provides that penalties accrue at a rate of up to \$5,000 for the first week and \$10,000 every week thereafter. As of the 30th day of November, 2002, the assessment penalty amount is \$175,000.00. This penalty will continue to accrue until the required work is performed and a draft Remedial Action Report submitted, or until a new deadline date is established pursuant to the terms of the FFA/CO.

II. Potential Administrative Violations

There are two other potential violations for which DOE could be assessed penalties, however, at this time we are requesting that DOE provide additional clarification as to what steps will be taken to prevent further incidents. Failure to prevent these incidents from recurring in the future could result in penalty assessment.

- OU 3-13: The September 2000 Waste Management Plan requires labeling of all remedial waste containers in storage in the Staging and Storage Annex (SSA). This Plan derives from ARARs identified in the 1999 ROD. In fact, at page 6-7 Section 6.2.5.1, it states, "The marking on the containers must always be clearly visible for inspection...". Containerized wastes stored within the SSA were observed to be either improperly labeled or unlabeled. Labels were not adequately affixed to an estimated 25% to 50% of the containers. [see Checklist

Table 3, Item 8]. Failure to implement ARARs and final documents approved pursuant to the terms of the FFA/CO represent a violation.

- OU 4-12: Paragraph 20.2 of the FFA/CO requires retention and production of records upon request. Landfill inspection reports from 1998 and 1999 were either not retained or not made available to the inspection team, as requested. [see Checklist Table 4, Item 1]. In addition, neutron probe monitoring was not performed in October and November of 1997 for all three landfills, as required under the June 1997 Work Plan. Furthermore, letters documenting scheduled transmittal of quality assured and non-quality assured sampling data were not made available to the inspection team as requested. Time Domain Reflectometry (TDR) monitoring was not performed from October 1997 thru August 1998 at Landfill 2. [see Checklist Table 4, Items 4 & 8]. Although there is more than one failure to perform under this category, this potential violation is considered as an annual aggregate. Paragraph 20.2 of the FFA/CO requires the retention of records for a minimum period of ten (10) years. Failure to retain records represents a potential violation of the terms of the FFA/CO.

Areas of Concern

In addition to the potential violations noted above, several observations remain a concern to the inspection team. These inspection observations represent potential problems/activities that could impact the environment, or result in future noncompliance. The following concerns regarding facility management remain as a result of the inspection:

- OU 3-13: The potential presence of 'hazardous substances' within "conditional" and/or "nonconditional" waste, generated in the performance of CERCLA remedial activities, is not adequately addressed in managing the CERCLA materials. All items containing CERCLA hazardous substances (not just RCRA hazardous waste) are of concern during CERCLA actions and subject to the Off-Site Rule (see 40 CFR §300.440) if these wastes are shipped off-site. [see Checklist Table 3, Items 5 & 6]
- OU 3-13: Procedures and requirements for the safe storage of hazardous substances as specified in the Waste Management Plan for the Staging and Storage Area are insufficiently defined. [see Checklist Table 3, Item 14]
- OU 3-13: No provisions were observed to prevent windblown dispersion of materials if released as a result of a spill from a failed or damaged container. Such a release of hazardous substances may result in an unacceptable risk to workers, the community or the environment. [see Checklist Table 3, Item 16]
- OU 3-13: The September 2000 Waste Management Plan and applicable or relevant and appropriate requirements (ARARs) established under the Record of Decision, require DOE to conduct inspections of all remedial waste containers in storage and waste liquids in tanks. The procedures demonstrated during the inspection did not allow for an evaluation of container or tank integrity in accordance with applicable ARARs identified in the Record of Decision. [see Checklist Table 3, Items 10 & 17]

Required Action

This letter constitutes written notice of the violation and potential violations described herein. Pursuant to Paragraph 11.2, DOE has fifteen (15) days to invoke dispute resolution on the question of whether the violation did, in fact, occur. If DOE does not invoke dispute resolution within 15 days of this letter, the penalty for failure to submit the required Remedial Action Report by July 29, 2001 is immediately due and payable. Submittal of the required report will demonstrate that DOE has implemented the interim action as specified in the OU 3-13 ROD and Group 1 RD/RA Work Plan. Additional penalties will continue to accrue until the violation is corrected. Documentation of any penalty payments must be provided to Wayne Pierre.

Thank you for your prompt attention to this important matter. Please direct any technical questions regarding this letter to Wayne Pierre at (206) 553-7261. If your questions are of a legal nature, please have your attorney contact Cyndy Mackey, Assistant Regional Counsel, at (206) 553-2569.

Sincerely,



Ronald Kreizenbeck
Deputy Regional Administrator

Enclosure:

cc: C. Stephen Allred, IDEQ
Dean Nygard, IDEQ
Kathleen Hain, DOE ✓
Bill Shipp, BBWI